

# WEST LAFAYETTE POLICE MERIT COMMISSION

## MINUTES OF SPECIAL MEETING

June 7, 2006

The West Lafayette Police Merit Commission met in special session at 1:01 p.m. in Council Chambers at City Hall on June 7, 2006. In compliance with the Indiana Open Door Law, notice of this regular meeting was sent to the press more than 48 hours before the meeting.

Police Merit Commission President Polles called the meeting to order and presided.

The Pledge of Allegiance was repeated.

PRESENT: Commissioners Don Corrigan, Larry Leverenz, Virginia Nead, John Polles, and Joel Weber.

ALSO PRESENT: Commission Conflict Counsel Szulkowski, Police Chief Marvin, Attorney Hermes, Specialist Weast, Attorney Blackwell, Clerk Intern Merchant, Clerk-Treasurer Rhodes, Human Resources Director Foster, Council President Hunt, four members of the public, and six members of the media.

### PRELIMINARIES

Attorney Hermes read the Stipulation of Facts and Evidence [hereto appended as Attachment 1] and provided each of the Commissioners with the 27 Exhibits of Evidence referred to in the Stipulation. Commission President Polles signed the document on behalf of the Commission. A motion to formally accept the Stipulation of Facts and Evidence was made by Commissioner Weber, seconded by Commissioner Leverenz. The voice vote was unanimously AYE.

### HEARING

Opening Statements were made by Attorney Hermes and Attorney Blackwell.

### The City's Case

Attorney Hermes then called the City's witnesses. Each was sworn in by Commission President Polles. Testimony was given. The format was that each witness was deposed by Attorney Hermes, cross-examined by Attorney Blackwell, optionally questioned again by Attorney Hermes, and optionally re-cross examined by Attorney Blackwell. Each Commissioner also had the option to question each witness. The witnesses, in order of appearance:

Scott Brown, First Sergeant of the Indiana State Police Department  
Scott Ksander, Senior Forensic Analyst/Engineer in Information Technology and  
Assistant Professor of Technology at Purdue University  
Norman Lefstein, Professor of Law and Dean Emeritus at Indiana University  
School of Law at Indianapolis  
Daniel Marvin, West Lafayette Police Chief

During Chief Marvin's testimony, there were two objections:

Attorney Blackwell objected to Exhibit 36, various emails related to duty assignments and Officer Weast's disagreement with those assignments. The objection was on the grounds of relevance to the proceedings. After discussion about the matter, Commissioner Weber made the motion to overrule the objection which would allow the testimony, evidence, and documents. The motion was seconded by Commissioner Nead. The Commission voted and overruled the objection by a 4-1 vote. The testimony, evidence, and documents were deemed admissible.

A second objection was by Attorney Hermes to the relevance to Chief Marvin's leadership as characterized by Attorney Blackwell. Commissioner Weber made the motion to sustain the objection and not allow the line of questioning. The motion was seconded by Commissioner Corrigan. The Commission voted and denied the motion by a 2-3 vote. The overruling the objection permitted the questioning to continue.

#### Supper Break

The Commission took a supper break at 6:23 p.m. and reconvened at 7:02 p.m.

#### The Weast Defense

Attorney Blackwell then called the defense witnesses. Each was sworn in by Commission President Polles. Testimony was given. The format was that each witness was deposed by Attorney Blackwell, cross-examined by Attorney Hermes, optionally questioned again by Attorney Blackwell, and optionally re-cross examined by Attorney Hermes. Each Commissioner also had the option to question each witness. The witnesses, in order of appearance:

Tom Rifner, President of Council, Town of Otterbein  
Joseph Douglas, Marshal, Town of Otterbein  
George Weast, Specialist, City of West Lafayette Police Department  
Michael Max, Specialist, City of West Lafayette Police Department  
Bob Vogel, Special Deputy, U.S. Marshal Service, Charles A. Halleck Federal Building  
Andrew T. McCormick, Court Security, Charles A. Halleck Federal Building

During Specialist Max's testimony, Attorney Hermes raised an objection about Attorney Blackwell calling for Specialist Max to speculate on a response to a hypothetical question. Attorney Hermes withdrew the objection.

#### Rebuttal Witnesses

Attorney Hermes called rebuttal witnesses who testified in turn, after being sworn in by Commission President Polles. The same format as earlier described was followed. The witnesses, in order of appearance:

Jerry Bean, Tippecanoe County Prosecutor  
Daniel Marvin, West Lafayette Police Chief

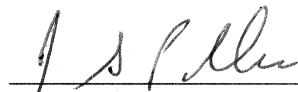
### Closing Statements

Commissioner Leverenz made a motion that the Merit Commission ask both Counsels to prepare Closing Statements and their Findings of Fact, and submit those to the Commission by 8:30 Friday morning. The motion was seconded by Commissioner Weber. Due to concerns by Attorney Blackwell about time to prepare the documents, Commissioner Leverenz withdrew the motion.

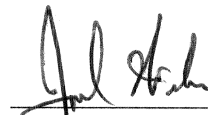
Commissioner Leverenz made a motion that oral arguments would be made on Friday at 8:30 a.m., and the Commission will write its own Findings of Fact and Conclusions of Law. The motion was seconded by Commissioner Corrigan. The voice vote was unanimously AYE.

### ADJOURNMENT

The hearing recessed at 10:30 p.m., until 8:30 a.m. on Friday, June 9, 2006.



John Polles  
President



Joel Weber  
Secretary

# WEST LAFAYETTE POLICE MERIT COMMISSION

## Notice of Special Meeting

June 7, 2006

1:00 p.m.

Council Chambers  
West Lafayette City Hall  
609 West Navajo Street  
West Lafayette, IN 47906

An open and public meeting of the City of West Lafayette Police Merit Commission will be conducted on the June 7, 2006, at 1:00 p.m., in the Council Chambers of West Lafayette City Hall.

The purpose of this special meeting is to receive information and to discuss alleged misconduct of Specialist George L. Weast, as well as Specialist George L. Weast's status as an employee. This special meeting is being held pursuant to I.C. 5-14-1.5-1 and Specialist George L. Weast's request for hearing under I.C. 36-8-3.5-17(c). No other subject matter will be heard or discussed during this special meeting.

If additional time is necessary to hear evidence and deliberate, the Commission will reconvene in an additional open and public meeting on June 9, 2006, at 8:30 a.m., in the Council Chambers of West Lafayette City Hall.

This Notice is issued pursuant to IC 5-14-1.5-5.

Joel N. Weber, Secretary  
West Lafayette Police Merit Commission

POSTED 05.24.06 8:50 AM. etc.

**BEFORE THE CITY OF WEST LAFAYETTE**  
**POLICE MERIT COMMISSION**

IN RE: THE DISCIPLINARY MATTER OF       )  
        GEORGE L. WEAST                       )

**STIPULATION OF FACTS AND EVIDENCE**

The parties, by counsel, hereby stipulate and agree to the following:

1. These proceedings were commenced on April 28, 2006, when West Lafayette Police Department ("WLPD") Chief Daniel Marvin filed his Findings and Formal Charges against Specialist George L. Weast, which are a part of the record in this matter and may be considered by the Commission, and provided notice of these charges to George Weast.
2. George Weast filed a timely written request with the Commission for a hearing on the charges that were filed against him, which is a part of the record and may be considered by the Commission.
3. George Weast filed a written motion for continuance to allow discovery and waived any rights to a hearing within thirty days pursuant to IC 36-8-3-4. WLPD and Chief Marvin did not object. The original and amended motions for continuance and waivers are a part of the record and may be considered by the Commission.
4. This matter was properly noticed for hearing by a Notice dated May 19, 2006, which is part of the record in this matter and may be considered by the Commission.
5. George Weast and the WLPD and Chief Marvin have conducted written discovery with regard to the matters at issue.
6. On July 21, 2005, various officers and employees of the West Lafayette Police Department, as well as many civilians, participated in a bus trip to Cincinnati sponsored by the West Lafayette Police Department ("WLPD") chapter of the Fraternal Order of Police ("FOP").

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7. During the course of that trip, certain WLPD officers consumed alcoholic beverages and engaged in loud, boisterous and/or offensive behavior, including in the presence of young children on the bus.

8. WLPD Specialist George L. Weast was not a participant on the FOP sponsored bus trip on July 21, 2005 and did not observe the conduct of any WLPD officers while they were on that trip.

9. George Weast was not at WLPD headquarters when the bus returned there from the FOP sponsored bus trip on July 21, 2005.

10. George Weast did not make or possess a videotape of any part of the FOP sponsored bus trip on July 21, 2005.

11. George Weast was the creator of the garciapara2@hotmail.com account.

12. On July 22, 2005, an email was sent to West Lafayette Mayor Jan Mills from the garciapara2@hotmail.com account, a true and correct copy of which is attached hereto and shall be admitted into evidence at the hearing as Exhibit 1.

13. George Weast sent the email contained in Exhibit 1.

14. On July 22, 2005, an email was sent to Mayor Mills from the garciapara2@hotmail.com account, a true and correct copy of which is attached hereto and shall be admitted as Exhibit 2.

15. George Weast sent the email contained in Exhibit 2.

16. An internal investigation of the allegations set forth in the emails sent on July 22, 2005, was conducted by the WLPD, Special Services Investigation No. 2005-08 ("SS#2005-08").

17. A criminal investigation of the allegations set forth in the emails sent on July 22, 2005 was conduct by Indiana State Police ("ISP").

18. George Weast accessed the garciapara2@hotmail.com account on many occasions, including from a computer located in Records at the WLPD, at the Otterbein Police Department on August 1, 2005, and from a computer at his home.

19. George Weast has been employed on a part-time basis by the Otterbein Police Department since before July 21, 2005, and such employment has continued through the present time.

20. On August 4, 2005, George Weast sent an email to First Sergeant Scott Brown of the ISP from the garciapara2@hotmail.com account, which was included in the email response sent by Sgt. Brown on that same date, true and correct copies of which are included in the materials contained in Exhibits 6 and 11 below.

21. In connection with ISP's criminal investigation and in response to a subpoena, Sgt. Brown obtained materials from MSN Hotmail on or about August 17, 2005, relating to the garciapara2@hotmail.com account.

22. In connection with ISP's criminal investigation and in response to a subpoena, Sgt. Brown obtained materials from Sprint Nextel on or about August 26, 2005, relating to how the garciapara2@hotmail.com account had been accessed.

23. WLPD Captain Michael Francis took the statement of George Weast as a part of SS# 2005-08 on or about August 29, 2005, a true and correct copy of which is attached hereto and shall be admitted as Exhibit 3.

24. Sgt. Brown took the statement of George Weast as a part of ISP's criminal investigation on or about August 31, 2005, a true and correct copy of which is attached hereto and shall be admitted as Exhibit 4.

25. After he was interviewed by Sgt. Brown on August 31, 2005, George Weast provided a document to the WLPD containing the password to the garciapara2@hotmail.com account, a true and correct copy of which is attached hereto and shall be admitted as Exhibit 5.

26. Prior to his interview with the Sgt. Brown on August 31, 2005, George Weast did not reveal or disclose to his superiors at the WLPD or in the course of the internal investigation relating to the FOP sponsored bus trip that he possessed a document containing the password to the garciapara2@hotmail.com account.

27. Prior to his interview with Sgt. Brown on August 31, 2005, George Weast had not revealed or disclosed to his superiors at the WLPD or in the course of the internal investigation that he had accessed the garciapara2@hotmail.com account on many occasions.

28. On September 2, 2005, George Weast printed copies of emails received on the garciapara2@hotmail.com account, true and correct copies of which are attached and shall be admitted as Exhibit 6.

29. WLPD Captain Michael Francis took an additional statement from George Weast as a part of SS# 2005-08 on or about September 5, 2005, a true and correct copy of which is attached hereto and shall be admitted as Exhibit 7.

30. Prior to his second interview with Cpt. Francis on September 5, 2005, George Weast had not revealed or disclosed to his superiors at the WLPD or in the course of the internal investigation that he had copies of emails from the garciapara2@hotmail.com account.



31. On September 8, 2005, Cpt. Francis submitted a written request to George Weast to provide copies of the emails Weast had from the garciapara2@hotmail.com account, a true and correct copy of which is attached and shall be admitted as Exhibit 8.

32. On September 9, 2005, George Weast submitted an email response to Cpt. Francis' request, a true and correct copy of which is attached and shall be admitted as Exhibit 9.

33. On September 9, 2005, Cpt. Francis replied to George Weast's email by email, a true and correct copy of which is attached and shall be admitted as Exhibit 10.

34. On September 13, 2005, George Weast provided to the WLPD copies of the emails from the garciapara2@hotmail.com account, true and correct copies of which are attached and shall be admitted as Exhibit 11.

35. Prior to September 13, 2005, George Weast did not provide the WLPD with copies of the emails from the garciapara2@hotmail.com account.

36. George Weast was the only person to access the garciapara2@hotmail.com account.

37. In connection with ISP's criminal investigation and in response to a subpoena, Sgt. Brown obtained materials from America Online Incorporated on or about September 30, 2005, related to George Weast's account.

38. Copies of the materials from the ISP investigation were provided to the WLPD for use in connection with its internal investigation.

39. On December 9, 2005, Cpt. Francis sent a supplemental report in SS# 2005-08 to Chief Marvin, a true and correct copy of which is attached and shall be admitted into evidence as Exhibit 12.

40. George L. Weast was subject to formal charges before the West Lafayette Police Merit Commission in 2004.

41. In a decision rendered on May 13, 2004, the Merit Commission suspended George L. Weast without pay for a period of 30 days as a result of his conduct. True and accurate copies of the Commission's Findings and Order are attached and shall be admitted as Exhibit 13.

42. On August 6, 2005, WLPD was served with a Subpoena Duces Tecum and Request for Production of Documents in the criminal case of State v. Jason E. Fee, Tippecanoe Superior Court No. 79 D06-0305-CM-00633, seeking WLPD records relating to George L. Weast. True and accurate copies of the Subpoena and Request are attached and shall be admitted as Exhibit 14.

43. The charges in Case No. 79 D06-0305-CM-00633 were based on the Affidavit for Probable Cause prepared by George L. Weast dated March 30, 2003, a copy of which is attached and shall be admitted as Exhibit 15.

44. The BAC DataMaster Ticket and Evaluation of Drug Influence forms relating to Jason Fee are attached and shall be admitted as Exhibit 16.

45. George Weast prepared a Reporting Officer Narrative in connection with his traffic stop and arrest of Jason Fee, a true and correct copy of which is attached and shall be admitted as Exhibit 17.

46. George Weast testified as the State's only witness in the criminal case of State v. Erin M. Boisvert, Tippecanoe County Superior Court No. 79D06-0209-CM-1437, held on February 10, 2005. The chronological case summary for the Boisvert case is attached and shall be admitted as Exhibit 18.

47. The charges in Case No. 79 D06-0305-CM-00633 were based on the Affidavit for Probable Cause prepared by George L. Weast dated August 25, 2002, a copy of which is attached and shall be admitted as Exhibit 19.

48. The BAC DataMaster Tickets and WLPD checklists for the chemical tests performed by George Weast on Erin Boisvert as attached and shall be admitted as Exhibit 20.

49. George Weast prepared a Reporting Officer Narrative in connection with his traffic stop and arrest of Erin Boisvert, a true and correct copy of which is attached and shall be admitted as Exhibit 21.

50. On September 1, 2004, Defendant's Motion to Continue was filed in the Boisvert case, a true and correct copy of which is attached and shall be admitted as Exhibit 22.

51. On October 7, 2004, defense counsel filed a Motion for Discovery in the Boisvert case, a true and correct copy of which is attached and shall be admitted as Exhibit 23.

52. The following exchange occurred during the cross-examination of George Weast:

Q: Now, Officer Weist let me direct your attention back to May of 2004 and on that date uh, you were disciplined by your department and the West Lafayette Police Merit Board. Is that correct?

A: That is correct.

Q: And that was due uh, generally speaking to an incident you were dispatched out for an investigation.

A: That was the start of it.

Q: And then the commission found that you conducted an improper search and violated Indiana Code 36-08-3.5-17. Is that correct?

A: I'm assuming you're reading that out of the findings of fact. . .

Q: I am.

A: So, I will say yes.

Q: And the commission also found that at the time of that incident you were not forthcoming to the shift commander and the deputy prosecutor regarding the search, which was in contradiction to the West Lafayette Police Department rules of conduct roman number IV to XVI quote "knowingly withhold information from the department, prosecuting attorney, or any court in which the officer is a

witness" end quote, and accordingly violated Indiana Code 36-8-3.5-17 conduct unbecoming. Is that correct?

A: That is – I assume you're reading that right out of the findings of facts, so I'll say yes that it is correct.

Q: And the Tippecanoe County Prosecutor's office has not filed criminal charges against you for that incident have they?

A: No, they have not.

Q: And that's the same Tippecanoe County Prosecutor's office who subpoenaed you and who you are testifying on behalf of today?

A: That's correct.

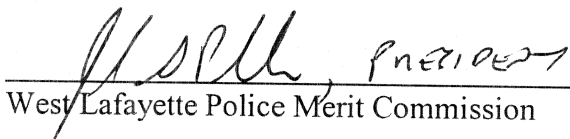
53. On February 10, 2005, the jury found defendant Erin M. Boisvert Not Guilty of Operating While Intoxicated (Class A Misdemeanor) and Not Guilty of Operating While Intoxicated (Class C Misdemeanor), a lesser included charge. True and correct copies of the verdicts are attached and shall be admitted as Exhibit 24.

54. At the commencement of his employment as a WLPD officer, George Weast took an Oath of Office, a true and accurate copy of which is attached and shall be admitted as Exhibit 25.

55. At the commencement of his employment as a WLPD officer, George Weast signed the WLPD's Code of Ethics, a true and accurate copy of which is attached and shall be admitted as Exhibit 26.

56. An excerpt from the West Lafayette Personnel Manual setting forth the Grievance Procedure for City employees is attached and shall be admitted as Exhibit 27.

SO ORDERED this 7 day of June, 2006.

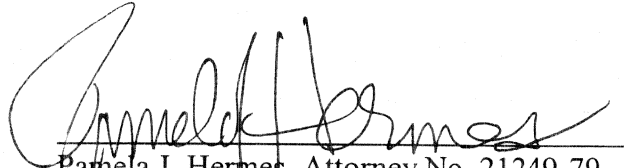
  
West Lafayette Police Merit Commission

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